

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

Writ Petition No.3261 of 1990

Sudhakar Ganesh Shinde

Agril, residing at Nipani

Tal Chikkodi Dist Belgaum .. Petitioner

VS

1. Hari Laxman Patil

Agril, residing at Belewadi

Kallamma, Tal Kagal, Dist.

Kolhapur.

2. The Mah Revenue Tribunal

through its President Shri

S.P.Ghogle, Notice to be served

on the Registrar Mah Rev Tribunal

Secretariat Annexe Bldg, Bombay.....Respondents

Mr H D Gole for the petitioner

Mr N J Patil for the respondent no.1

Coram: S.C.DHARMADHIKARI J.

Dated 25th April 2006

Judgment:(Per S.C.Dharmadhikari J.)

1. By this petition under Article 227 of the Constitution of India the petitioner challenges the judgment and order dated 14.2.1990 passed by the Maharashtra Revenue Tribunal (hereinafter referred to as the MRT) in Revision Application No 12 of 1986. The petitioner seeks restoration of the orders passed on 24.12.1982 by the Additional Tahasildar and Agricultural Land Tribunal, Kagal in tenancy case no. 32P/Belewadi Kallamma 245 as well as order passed by the Sub-Divisional Officer (SDO for short), Kagal date 19.2.1986 in Tenancy Appeal no. 142 of 1984.

2. The proceedings are under the Bombay Tenancy and Agricultural Lands Act, 1948 (hereafter referred to as the BTAL Act). The petitioner is the landlord of the agricultural land situate at village Belewadi Kallamma in Kagal taluka, District Kolhapur, bearing S.No.162 admeasuring 0.98 and 0.19 ares pot kharab (hereinafter referred to as the said land).

3. The petitioner's father was the landlord of the land until his death. It is the case of the

petitioner that from 1953 until his death on 22.5.1964, the petitioner's father was suffering from paralysis. According to the petitioner, he was physically disabled person as contemplated by sections 31,32 and 32F of the BTAL Act. Laxman Santu Patil, father of the respondent no.1 was the original tenant of the said land. The respondent no.1 has inherited the tenancy rights of his deceased father in respect of the said land. The petitioner's father being disabled, according to the petitioner, the tiller's day was postponed. In the year 1965 the Addl Tahasildar and ALT, Kagal initiated proceedings under section 32G of the BTAL Act. This was on the basis that the tenant had become owner of the said land. However, according to the petitioner, no notice was served in respect of these proceedings on him. The Addl Tahasildar and ALT recorded statement of the tenant on 17.9.1965 in his absence. In this statement, the tenant had expressed his desire to purchase the said land. Hence, by his order dated 10.1.1966, the Addl Tahasildar and ALT declared that the tenant had become deemed purchaser of the said land and proceeded to fix price thereof. A copy of the order of the Addl Tahasildar and ALT Kagal is

annexed as Exhibit A to the petition.

4. The petitioner being aggrieved by the order at Exh A preferred an appeal being Appeal No. 591 of 1967 before the Special Deputy Collector for Tenancy Appeals Kolhapur. According to the petitioner, after noticing that the order passed by the Addl Tahasildar and ALT was exparte order, the appellate authority allowed the appeal and remanded the matter to the Addl Tahasildar and ALT for fresh hearing and disposal according to law. A copy of the said order is annexed as Exh B to the petition which order was passed on 12.9.1968.

5. On remand the Addl Tahasildar and ALT, Kagal recorded statements of parties and heard them. In his statement dated 7.8.1969 the tenant again expressed his desire to purchase the said land. However, according to the petitioner, the Addl Tahasildar and ALT, Kagal by his order date 7.8.1969 confined the case to the dormant file.

6. According to the petitioner, the proceedings remained in the dormant file till the year 1982. Thereafter, according to the petitioner, notices

were issued to both parties . The Addl Tahasildar and the ALT visited site for spot inspection and for the purpose of valuing the trees therein. A reference was also made to the forest department for valuation of the trees and thereafter the statements of the parties came to be recorded.

7. In his statement dated 21.8.1982 the tenant stated that he was desirous of purchasing the said land. The Addl Tahasildar and the ALT after considering the statements and the material on record observed that the tenant had not given intimation of his desire to purchase the said land within the time stipulated by section 32F of the BTAL At. Consequently he held that the sale of the land was ineffective under section 32F read with section 32(3) of the BTAL Act. A copy of the order dated 25.8.1982 is annexed as Exh C to the petition. According to the petitioner, this order was never challenged by the tenant. Thus, it became final and conclusive.

8 In pursuance of the order at Exh C, the Addl Tahasildar and the ALT initiated proceedings under section 32P of the said Act and by order dated

24.12.1982 directed that the tenant be summarily evicted from the said land and same be handed over to the petitioner-landlord. A copy of this order is annexed at Exh D to the petition.

9. Aggrieved by the order dated 24.12.1982 the tenant preferred an appeal before the SDO, Kagal being Tenancy Appeal no. 142 of 1984. The SDO, Kagal, heard the said appeal and by order and Judgment dated 19.2.1986 dismissed the same. A copy of the said order dated 19.2.1986 in Tenancy Appeal no. 142 of 1984 is annexed as Exh E to the petition. These orders were challenged by the tenant in Revision Application before the MRT and the learned President of the MRT by the impugned order (Exhibit F to the petition) delivered on 14.2.1990 set aside the orders of the Addl Tahasildar and ALT as well as the appellate authority. In other words, the MRT allowed the revision application of the tenant.

10. The petitioner-landlord has invoked this court's jurisdiction under Article 227 of the Constitution challenging the revisional order.

11. Shri Gole, learned counsel appearing for the petitioner contended that the order passed by the MRT suffers from error apparent on the face of the record. In his submission, the MRT has exceeded its revisional jurisdiction and interfered with a pure finding of fact which is impermissible in law. According to him, it is not permissible to reappreciate and reappraise the material in revisional jurisdiction. The MRT lost sight of this fundamental and vital aspect of the matter. According to Shri Gole, the learned President of MRT could not have disturbed the concurrent findings of fact in revisional jurisdiction and, therefore, the impugned order can safely be termed as perverse.

12. Further, according to Shri Gole, the MRT has failed to notice that the order dated 25.8.1982 is final and conclusive. The said order is passed in a proceeding under section 32G of the BTAL Act. These proceedings were initiated by the tenant under section 32G thereof. Having failed in getting a declaration that the tenant is a deemed purchaser and purchase price be fixed, it is not permissible for the tenant in a proceeding under

section 32P of the BTAL Act to reagitate and reopen this issue. He submits that section 32P of the BTAL Act envisages summary proceedings for eviction of the tenant, who has failed to get any right in his favour either under law or in an adjudication. Therefore, such a person is nothing but a trespasser upon the land and the landlord is entitled to evict him. Such being the nature of the proceeding initiated by the petitioner, the tenant cannot be heard to say that he has become deemed purchaser and, therefore, not liable to be evicted from the said land, more so, when he fails to challenge the order which is adverse to him. Shri Gole submits that the order passed by the Addl Tahasildar and ALT dated 24.12.1982 is a consequential order. That is confirmed in appeal by the SDO. Once the landlord was disabled and he cannot get possession of the land then the order of the MRT deserves to be set aside.

13. Shri Gole was at pains to emphasise the fact that there is conclusive finding against the tenant that he has lost his right title and interest in the land. He submits that the order dated 25.8.1982 being not challenged and having attained finality

all subsequent attempts by the tenant to same set at naught are impermissible. The petitioner must succeed in this petition because the tenant has only challenged the consequential orders and not the order dated 25.8.1982.

14. On the other hand Shri Patil appearing for the tenant submits that the order passed by the MRT cannot be challenged by the landlord because the said order is based upon materials which have been placed on record. In his submission, despite these materials being on record, the Addl Tahasildar and ALT as also the SDO failed to appreciate them in their proper perspective. In his submission, the mandate of the BTAL Act is to grant protection to a tiller of the land. Assuming that the landlord was disabled, yet, once the tenant has shown his interest to purchase the land and appeared before the competent authority, who recorded such intention, then, it is clear that the tenant had become deemed purchaser upon the postponed period in law coming to an end. In his submission, assuming that the landlord was disabled from 1953 till date of his death on 22.5.1964, the fact remains that on 22.5.1964 the tenant was

cultivating as also in possession of the said land. Therefore, even if the tiller's day is postponed from 1.4.1957 to 22.5.1964, yet, from that date the tenant had become deemed purchaser. Therefore, it is open for the authorities to fix the purchase price. In his submission, the purchase price having been deposited by the tenant and the landlord dying during the disability there is no obligation to give notice to the successors in title of the landlord.

15. Mr Patil has strenuously urged that the order of the Addl Tahasildar and ALT dated 25.8.1982 is a nullity. Such an order can be ignored and can be challenged at any stage. He submits that it was open to the tenant to question the legality and validity of that order during the course of hearing of revision application preferred by him, more so, when in earlier proceedings the tenant has expressed his readiness and willingness to purchase the property. Mr Patil has gone to the extent of contending that all the orders after 10.1.1966 are nullity. He submits that the proceedings under section 32P initiated by the petitioner are barred by limitation. The application of the petitioner

deserves to be dismissed on that count alone. He submits that sufficient compliance is made by the tenant. As regards giving notice, it is submitted that once the petitioner was party all throughout it is not open for him to allege that no notice was given to the successors in title of the landlord. In support of his submission Mr.Patil placed reliance on the following decisions:

- 1) AIR 1954 SC 340 - Kiran Singh vs Chaman Paswan
- 2) AIR 1959 SC 469 - Sri Ram Ram Narain vs State of Bombay
- 3) AIR 1986 Bombay 86 - S.S.Horambale vs Sripad Jiwaji Apte(through L Rs)
- 4) (1993) 2 SCC 507- Chiranjitlal Shirlal Goenka (through LRs) vs Jasjit Singh and ors
- 5) 1998(2) Bom C R 655- A.R.Rajadhye vs Krishna Sakharam Patil and ors

16. According to Mr.Patil the MRT has committed no error but in fact was justified in exercising its revisional jurisdiction and undoing the wrong done to the tenant in this case. Once the learned President of the MRT has noticed the judgment of the Hon'ble Supreme Court reported in AIR 1983 SC

643 in the case of Amrit Bhikaji Kale and ors vs. Kashinath Janardhan Tayade and anr and the decision of His Lordship Shri Justice S.C.Pratap (as His Lordship then was) in Srikrishna S Horambale and ors vs Shripad J Apte and ors, reported in AIR 1986 Bombay 86 and the facts in the present case being identical then no fault could be found with the approach of the MRT in this case. He submits that the very purpose of conferring revisional jurisdiction is to see that the courts subordinate to the MRT act within the bounds of their jurisdiction and authority and if they fail to do so then the MRT must step in and redress the injustice and correct the wrong done to the tenant. A social welfare legislation must receive such interpretation otherwise its object and purpose would be wholly defeated and frustrated.

17. For appreciating the rival submissions, it is necessary to refer to the undisputed facts. They are that the predecessor in title of the petitioner was the landlord and the petitioner succeeded him. Similarly the predecessor in title of the respondent was the tenant and the present respondent had succeeded him. The lands are

agricultural lands situate in an area to which the BTAL Act applies. Further, undisputed fact is that the predecessor in title of the petitioner suffered from paralysis for a prolonged period from 1953 and ultimately expired on 22.5.1964. The tiller's day is 1.4.1957. According to the petitioner, on account of disability of the landlord the tiller's day is postponed. However, it is equally true that in the year 1965 after the alleged disability was removed the tenant requested the authorities to fix purchase price on the basis that he had become deemed purchaser of the land. The order dated 10.1.1966 may have been set aside in appeal at the instance of the petitioner, but the above mentioned facts recorded therein are not at all controverted.

18. With the assistance of the learned counsel appearing for both sides I have perused the orders, copies of which are annexed to this petition. The above facts are gathered from a reading of the same. From a perusal of the orders, it is apparent that the proceedings which were initiated by the tenant way back in the year 1965 culminated in an order in his favour dated 10.1.1966. Upon appeal by the petitioner the matter was remanded by the

appellate authority on 12.9.1968. It is unfortunate that the tenant was locked in a battle continuously because although being in physical possession and cultivating the said land the proceedings remained in the dormant file. For no fault of the tenant from 1968 till 1982 the authorities did not bother to take up the matter. One of the grounds put forth by the landlord's advocate appearing before me is that some amendments were contemplated to the BTAL Act and, therefore, the proceedings were consigned to the record. The fact remains that the Act has been amended extensively in the year 1969 but that is hardly any justification for the proceedings remaining pending for 13 years.

19. Be that as it may, noticing that the tenant was cultivating the land, the authorities held that the landlord was suffering from paralysis and in their opinion the right of purchase of the land by the tenant, therefore, is postponed. The authorities have also noticed that the tenant's statement was recorded after he appeared and purchase price was fixed. Thereafter, the order was set aside and fresh inquiry commenced. It is also

admitted that the tenant reiterated his stand when statements were recorded once again after remand on 21.8.1982. The MRT has noticed these facts and rightly concluded that the tenant had become deemed purchaser statutorily and automatically on 22.5.1964 when the disabled landlord died while still under disability. The MRT, therefore extended and in my opinion rightly, the benefit of the Amended Act to the tenant in this case.

20. The MRT has referred to the fact that for the second time the tenant expressed his desire to purchase the said land on 7.8.1969 when his statement was recorded by the Addl Tahasildar and ALT in proceedings under section 32G of the BTAL Act. This statement was recorded after notice was given by the Addl Tahasildar and ALT and even landlord's statement was recorded on the same day. This date clearly falls within the period of 2 (two) years from the commencement of the Amending Act. In these circumstances, the right of the tenant to purchase the land could not have been denied by the orders under challenge before the MRT.

21. In my view there is another angle from which the whole matter can be appreciated, namely, if the tiller's day was postponed and the tenant had become deemed purchaser, then all that remained was fixation of purchase price. It is for fixation of purchase price that the matter came to be remanded from time to time. This aspect can be better appreciated by referring to the order of remand. The order of remand passed in 1968 sets aside the order dated 10.1.1966 which fixes the purchase price. The landlord being under disability and dying during that period on 22.5.1964 the order on the application under section 32G passed in 1966 is admittedly after the death of the predecessor in title of the petitioner. Thus, all throughout emphasis was on this fact, namely, whether the purchase price can be fixed and what should be the same. After remand issues were framed and it is true that the findings on issue no. 3 are that the tenant has not exercised his right in the manner provided under section 32F (1A) of the BTAL Act. However, the aspect of notice is not very much relevant when within the period of amended statute the landlord and the tenant appeared and their statements were recorded. Thus, the fact that

there is failure to give notice has not been seen of much consequence. Before me, the emphasis is that the order dated 25.8.1982 having gained finality, the tenant is liable to be evicted summarily. In my view, the so-called finality attached to this order cannot wipe out the legal consequence on the above noted admitted facts. That, the tenant has not challenged this order further does not mean that the legal effect and consequences flowing from the statutory provisions are wiped out. More so, in the context of a social welfare legislation, which is enacted to confer a title on the tiller of the land.

22. Somewhat, similar was the controversy before the Hon'ble Supreme Court in the decision reported in AIR 1983 SC 643. After referring to the earlier decision reported in AIR 1959 SC 459 in para 6 of this decision this what the Supreme Court observed:

"The Tenancy Act was comprehensively amended by Amending Act 15 of 1957. The amendment brought in a revolutionary measure of agrarian reforms making tiller of the soil the owner of the land. This was done to

achieve the object of removing all intermediaries between tillers of the soil and the State. S 32 provides that by mere operation of law, every tenant of agricultural and situated in the area in which the Act applies shall become by the operation of law, the owner thereof. He is declared to be a deemed purchaser without any thing more on his part. A Constitution Bench of this court in *Sri Ram Ram Narain Medhi v State of Bombay*, 1959 Supp (1)SCR 459 at p 518 = AIR 1959 SC 459 at p 472) held that:

The title of the landlord to the land passes immediately to the tenant on the tillers' day and there is a completed purchase or sale thereof as between the landlord and the tenant. The title of the land which was vested originally in the landlord passes, to the tenant on the tillers' day and this title is defeasible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or commit default in payment of the

price thereto as determined by the Tribunal". Therefore, it is unquestionably established that on the tillers' day, the landlords interest in the land gets extinguished and simultaneously by a statutory sale without anything more by the parties, the extinguished title of the landlord is kindled or created in the tenant. That very moment landlord tenant relationship as understood in common law or Transfer of Property Act comes to an end. The link and chain is broken. The absent non cultivating landlord ceases to have that ownership element of the land and the cultivating tenant, the tiller of the soil becomes the owner thereof. This is unquestionable. The landlord from the date of statutory sale is only entitled to receive the purchase price as determined by the Tribunal u/s 32G. In other words, the landlord ceases to be landlord and the tenant becomes the owner of the land and comes in direct contact with the State. Without any act of transfer inter vivos the title of the landlord is

extinguished and is created simultaneously in the tenant making the tenant the deemed purchaser. It is an admitted position that on April 1, 1957 Tarachand was the landlord and Janardhan was the tenant. Tarachand landlord was under no disability as envisaged by S 32F. Therefore, on April 1, 1957 Janardhan became deemed purchaser and Mr. Lalit could not controvert this position."

The only distinguishing feature is that the landlord in this case was under no disability. In the case at hand, disability was there and the tiller's day was postponed but the legal effect remains the same. In other words, upon the tenant becoming deemed purchaser and the landlord ceasing to be the landlord, the tenant is the owner of the land and comes in direct contact with the State. In this case the relationship with State commenced from 22.5.1964. In the case before the Supreme Court the sole controversy was whether the sale was postponed. The decision is in identical fact situation as is clear from a reading of para 1 of

the Supreme Court decision. There also the minor landlord commenced proceedings for eviction /recovery of possession from the tenant J, who had become deemed purchaser, according to the Supreme Court. However, the Supreme Court noticed that such proceedings at the instance of the minor landlord cannot wipe out the obvious fact that on the tiller's day the landlord being under no disability the consequence must follow and the sale could not be postponed.

23. Before the Supreme Court, in a proceeding initiated by the landlord the above aspects came to its notice. The Supreme Court noticed that after the relationship of landlord and tenant was snapped no proceedings could have been commenced for possession. This aspect is noted and on that basis the Supreme Court in paras 10,11 and 12 observes thus:

"10. The attempt to overcome this position by urging that the order was erroneous was rightly repelled by the High Court holding that the orders were null and void, proceeding on an erroneous assumption of a

jurisdictional fact that the recorded owner was a minor on the tillers' day. When a tribunal of limited jurisdiction clutches at a jurisdiction by ignoring a statutory provision and its consequences in law on the status of parties or by a decision wholly unwarranted with regard to the jurisdictional fact, the decision is a nullity and can be set up in collateral proceeding. The tribunal clutched at a jurisdiction not vested in it and in such a situation it cannot be disputed that the tribunal lacked the jurisdiction to entertain any proceeding purporting to be between landlord and tenant on the erroneous assumption that tenant was still a tenant though he had long since become the deemed purchaser. The tenant had ceased to be a tenant much prior to the orders passed by the tribunal on April 24, 1961 and July 13, 1967 holding that the date of compulsory purchase was postponed. The compulsory purchase by the operation of law had taken place as early as April 1, 1957 and that legal position cannot be washed away.

11. A measure whereby tenant was to be made the owner of the land cannot be permitted to be defeated by such jugglery of orders by low level revenue officers who hardly knew what they were doing. Look at the lack of knowledge of law of the tribunal. While overlooking the relevant date, and it took into account the subsequent date which was wholly irrelevant and impermissible. Though landlord Tarachand had died much after 1.4.1957 in proceeding under section 32G minor Ashoklal whose name was mutated on death of Tarachand, the authority declared the sale having been postponed eventhough statute had already operated and sale taken place. Can a statutory tribunal charged with a duty to implement the law betray such total lack of knowledge so as to be counter productive? Same is the case with the decision of Tenancy Aval Karkoon. A proceeding u/s 14 read with sec 29 of the Tenancy Act, started on the footing that the relationship of landlord and tenant subsisted should have

been thrown out at the threshold because a decade back the then tenant Janardhan had become the deemed purchaser. Therefore these orders were wholly null and void and hence non est and cannot thwart subsequent proceedings. The nullity can be set up in subsequent proceedings".

12. Janardhan was deprived of his possession by an order which had no legal sanction. He was deprived of possession on the footing that he was a tenant ignoring and overlooking the statutory event that he had become the owner. Even when the Legislature passed such a revolutionary measure its knowledge was not transmitted to the persons for whose benefit the measure was enacted and there was no awakening to one's right. Undoubtedly, a communication gap and for want of legal literacy Janardhan was taken on a joy ride and was illegally made to part with possession. Subsequently, everyone realised the blunder committed by them and therefore when the proceedings started on the notice given by Janardhan, the

tribunal determined the price . Appeal of the petitioners to Asst Collector, failed, revision petition to the Maharashtra Revenue Tribunal at the instance of the petitioners failed so also the writ petition u/s 227 of the petitioners failed. All authorities concurrently held that Janardhan had become the owner and the tribunal was right in determining the price."

24. In the decision reported in AIR 1986 Bombay 86 relying upon the earlier decision of the Supreme Court reported in AIR 1959 SC 459, in paras 5,6, and 7 the learned Judge after formulating the questions observed thus:

"5. If the disabled landlord was alive and had continued to be subject to physical disability, the tenants would have continued to be his tenants, if the landlord's disability had ceased during his lifetime, he would have been then entitled to terminate the tenancy under sec 31 of the Tenancy Act. If the tenancy had been so terminated, then, in an application

thereafter under sec 29 of the Tenancy Act, the landlord could have either failed or succeeded, wholly or partly, and the tenants would have on final termination of the said proceedings, automatically become the deemed purchasers of the whole or part of the suit and as the case be. Their statutory right of purchase, which had remained in abeyance during the period of the landlord's disability, would have accordingly got suitably crystalised by operation of law. Still further, if the landlord's disability had ceased but he had even so failed to take within one year thereafter action as per s 31(3), then the tenants would have, on intimation (within a further period of one year as per s 32F(1)(a)) to the landlord of their willingness to purchase, become deemed purchasers of the suit land. However, in view of the landlord's demise during the subsistence or continuance of his disability, this contingency did not arise.

6. Now, at all relevant times the tenants had subsisting in their favour a statutory

right of purchase. All that result by virtue of the disability of the landlord was postponement of the said right and not its defeat or extinguishing. Could it then be said or held that though aforesaid was the position subsisting in favour of the tenants at all relevant times during the lifetime of the landlord, the same stood extinguished per se by the landlord's demise in a state of disability? Appropriate answer in consonance with justice would be in the negative., When the tenants already had a statutory right of purchase vested in them and when they had as many as on four different occasions, affirmatively expressed in section 32G proceedings their willingness to purchase but when because of their landlord's disability (a circumstance beyond the control of the tenants) they could not, in the lifetime of their landlord, become deemed purchasers, could it at all have been the intention of the Legislature to even so extinguish in limine or summarily this vital and important and statutory right ipso facto on the demise of

a disabled landlord? Appropriate answer in consonance with justice would once again be in the negative. In a case such as this, an important statutory right of purchase conferred by the legislature upon the tenants in actual possession and personal cultivation cannot be defeated or set at naught by a misconceived recourse to s 32F., This provision does not deal with a situation as the instant one. It does not provide for such contingency. Such a likelihood was perhaps not foreseen by the legislature. If foreseen, the legislature would have expressly provided for it in a manner, of which this court has no doubt, in favour of the tenants' vital statutory right of purchase otherwise so categorically conferred upon them by the Tenancy Act. In the circumstances one may then turn to the fundamental provision of s 32 of this Act.

7. Section 32 is a very vital provision. It is a key section introduced with effect from 1st August 1956 by Amending Act 13 of

1956., This Amending Act is intended overwhelmingly for the benefit of tenants. It is a landmark legislation conferring upon tenants who are tillers of the soil ownership rights qua the land they personally cultivate. This statutory ownership so conferred operates or takes effect automatically. As observed by the Supreme Court in Sri Ram Ram Narain v State of Bombay, 61 Bom LR 811 at p 824:(AIR 1959 SC 459 at p 472):

".... The title of the landlord to the land passes immediately to the tenant on the tillers' day and there is a completed purchase or sale thereof as between the landlord and the tenant. The tenant is no doubt given a locus poenitentie and an option of declaring whether he is or is not willing to purchase the land held by him as a tenant. If he fails to appear or make a statement that he is not willing to purchase the land, the Tribunal shall by an order in writing, declare that ;such tenant is not willing to purchase the land and that the

purchase is ineffective... If no such declaration is made by the tribunal, the purchase would stand as statutorily effected on the tillers' day and will continue to be operative, the only obligation on the tenant then being the payment of price in the mode determined by the tribunal... The title to the land which was vested originally in the landlord passes to the tenant on the tillers' day or the alternative period prescribed in that behalf. This title is defeasible only in the event of the tenant failing to appear or making a statement that he is not willing to purchase the land or committing default in payment of the price thereof as determined by the Tribunal". The tenant gets a vested interest in the land defeasible only in either of those cases and it cannot, therefore, be said that the title of the landlord to the land is suspended for any period definite or indefinite...."

Such then are then are the vital, valuable and vested rights conferred upon tenants by the legislature. In the absence of any

express provision to the contrary and then also save expressly in accordance therewith, courts and tribunals may not seek to undo what the Legislature seeks and intends to achieve".

25. This judgment is followed again in a decision reported in 1998(2) Bom C.R. 655. Mr Gole attempted to distinguish these judgments on the basis that rightly or wrongly, in the matter before me, upon remand, both issues as to whether the tenant had become deemed purchaser and that he can tender purchase price, were decided and that too against the tenant in 1982. The tenant having not challenged that order further, it was open for the landlord to institute proceedings under section 32P of the BTAL Act. Section 32P in so far as it is relevant for our purpose reads thus:

"32P((1) Where the purchase of any land by tenant under section 32 becomes ineffective under section 32G or 32M or where a tenant fails to exercise the right to purchase the land held by him within the specified period under section 32F (32O, 32C or 43ID) the

tribunal may suo motu or on an application made on this behalf and in case other than those in which the purchase has become ineffective by reason of section 32G or 32M, after holding a formal inquiry direct that the land shall be disposed of in the manner provided in sub-section (2)

(2)Such direction shall provide-

(a) that the tenant be summarily evicted"

26. A bare perusal of this provision would indicate that it would operate when the purchase of any land by a tenant under section 32 becomes inoperative under section 32G or 32M or where the tenant failed to exercise the right to purchase the land held by him within the period specified in section 32F. In other words, the tribunal gets power to issue directions for summary eviction against the former tenant only upon the aforesaid conditions being fulfilled. The tribunal may exercise its power suo-motu or on application made in that behalf, however, it is only when the purchase becomes ineffective or the tenant failing to exercise the right to purchase the land within

the specified period that the question of such power being exercised arises.

27. In the present case, it is true that the order dated 25.8.1982 proceeds on the basis that the tenant has lost the right because he did not give any notice or intimation to the landlord within the specified period. But, as held by this court in the case reported in AIR 1986 Bom page 86 (supra) the tenant has subsisting right in his favour of purchase and that right cannot be defeated or if not extinguished, if the landlord is disabled but it is merely postponed. The tenant already had a statutory right of purchase vested in him and as in the present case as well the intention was all throughout expressed in section 32G proceedings about the willingness to purchase the land. Thus, that right cannot be defeated or set at naught by misconceived reference to section 32F(1A). It is not as if in the order passed on 25.8.1982 that the appellate authority holds that the right is lost otherwise than for failure to give notice/intimation to the successors in title of the disabled landlord. Once proceedings were postponed due to disability of the landlord and the law being

that there is no obligation to give notice to the heirs of the landlord on his death, then the order dated 25.8.1982, even if not challenged, would not come in the way of the tenant tendering price and getting a certificate in his favour.

28. In paras 6 and 7 of the order of the MRT the above aspects have been noted and in my view these observations are in consonance with the statutory provisions as well as interpretation placed upon them in the above referred decision of the Supreme Court and this court.

29. Once this view is taken then it is not necessary to make any reference to the other decisions cited by Mr.Patil. He proceeds on the basis that the order dated 25.8.1982 is a nullity and, therefore, it need not have been challenged and could be ignored and in any event challenged in collateral proceedings at any stage. The decision of the Supreme Court referred by me above as also the decision of this court laying down the above settled principles and the present case falling within the four corners of these decisions, it is not necessary to decide whether the order passed on

25.8.1982 is a nullity or not. Even if that order was not challenged factual position and the legal consequence flowing there from having been noticed by the tribunal as well as by me, in my view, the MRT was not in error in interfering in its revisional jurisdiction to correct the error apparent on the face of record which resulted in injustice.

30. The submission of Mr Gole that the order of the MRT is illegal and perverse because it sets at naught the order dated 25.8.1982 is not well founded at all. The binding nature of this order and its finality will not be of any consequence once it is clear that on the date of the passing of that order the relationship as landlord and tenant had already snapped and all that remained was fixation of purchase price by the authorities competent to do so. Having noticed the statutory provisions and the binding decisions, in my view, all the issues framed by the tribunal while passing the order dated 25.8.1982 could not have been framed and decided at all. The Addl Tahasildar and the ALT, Kagal was aware of the fact that the purchase price was fixed but it was done in the

absence of the landlord and that is why the matter was remanded. That apart, the finding on issue no.1 itself is sufficient to conclude that the right to purchase gets postponed because the landlord was disabled on 1.4.1957. In other words, the legal effect of the tiller's day being noticed, all that is postponed is the enforcement of the right because of the disability of the landlord. The right is not extinguished on the own showing of the Addl Tahasildar and ALT. His finding on the subsequent issues and more particularly issues nos. 3 and 5 are therefore contrary to the legal position summarized by me above. It is not necessary to burden this judgment by reproduction of the statutory provisions once the interpretation placed upon them by the Hon'ble Supreme Court and this court is noticed by me as well as the tribunal. The consequences in law flowing from the factual position could not have been brushed aside by the ALT. Therefore, the said order was not binding on the MRT.

31. In any event, in the proceeding under section 32P, initiated by the petitioner-landlord the tenant raised this specific plea. It is clear from

the reading of the order at annexure E to the petition and more particularly page 29 of the paper book that identical contentions were raised. The SDO relies upon the principle that the order dated 25.8.1982 not being challenged the application preferred by the landlord under section 32P must be allowed. Once the SDO relies upon the order dated 25.8.1982 then in a challenge to his (SDO's) order before the MRT, it was open to the tenant to have pointed out that the so called principle of finality of this order cannot be invoked at all. The reliance upon this order by the SDO in a proceeding under section 32P was misplaced and it was open for the tenant to contend that despite this order the right of ownership is unaffected in law. It is that submission of the tenant which was contested by the petitioner before the MRT. It is that contention of the tenant which has been upheld by the MRT. Hence, it is not open for the petitioner landlord to defeat the right of the tenant and now challenge the order of the MRT by invoking the principle of finality of proceedings and orders. Even otherwise, there can be no estoppel against law.

32. Therefore, I am unable to accept the contentions of Mr.Gole that the MRT has erred in setting aside the order of the SDO and that of the Addl Tahasildar and ALT in proceedings under section 32P of the BTAL Act initiated by the petitioner landlord. The tribunal has decided the matter from the point of view of tenant's right to purchase the land and this issue was very much alive after it being raised by the landlord himself. Therefore, the tribunal is not estopped from considering the rival contentions and material on record. Merely because the order dated 25.8.1982 is not challenged by the tenant, that cannot prevent the MRT from exercising its revisional jurisdiction. More so, when it notices errors apparent and perversity on the part of the authorities below it. In any event, in view of the facts and circumstances, this is not fit case, wherein this court should exercise its extra-ordinary powers under Art 227 of the Constitution, more so when substantial justice has been done.

33. As a result of the above discussion, the writ petition fails. Rule is discharged. Interim order

in terms of prayer clause (c) stands vacated.
However, in the facts and circumstances of the
case, there shall be no order as to costs.